TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 604.

THE UNITED STATES, APPELLANT,

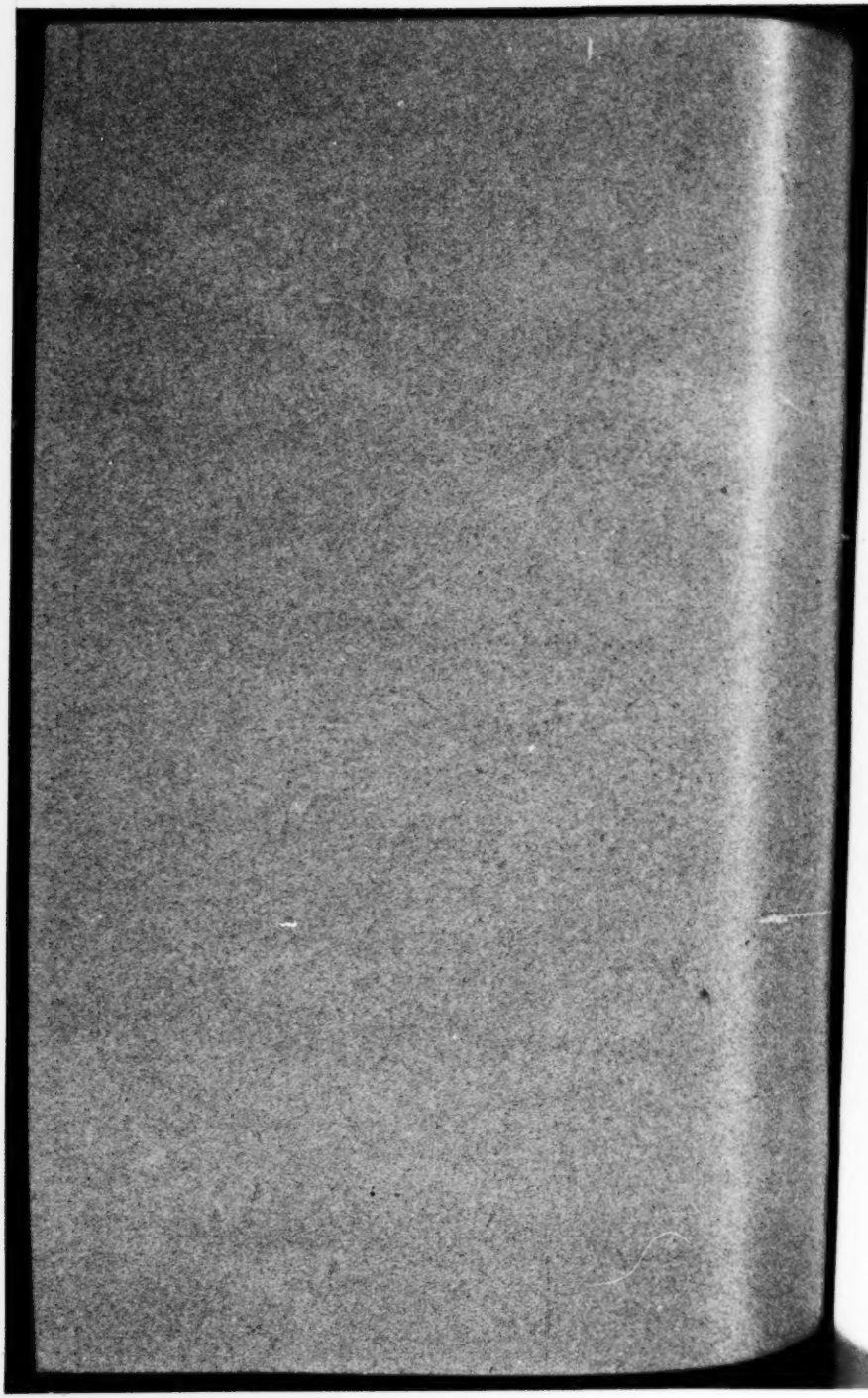
vs.

ALONZO J. VAN DUZEE.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 18, 1902.

(19457)



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20791—02

1 Court of Claims.

ALONZO J. VAN DUZEE
vs.
THE UNITED STATES. } No. 21178.

I. PETITION.—*Filed November 10, 1898.*

To the honorable judges of the Court of Claims:

Your petitioner, Alonzo J. Van Duzee, a citizen of the United States, and a resident of Dubuque, in the State of Iowa, respectfully shows:

That from the 1st day of July, 1897, to the 31st day of December, 1897, he was clerk of the United States circuit courts for the northern district of Iowa, duly qualified, and acted as said clerk.

That your petitioner presented to the accounting officers of the Treasury for payment his accounts for services as said clerk from the 1st day of July, 1897, to the 31st day of December, 1897, sworn to and duly
2 approved by the court, as required by the act of February 22, 1875, 18 Stat. L., 333; that in the settlement of said accounts the accounting officers disallowed and refused payment of fees for the following services, as per Exhibit A herewith attached.

Petitioner claims that, in accordance with the provisions of section 828 of the Revised Statutes of the United States, he is entitled to be paid by the United States for each of the services performed by him as aforesaid, and approved and allowed by the court; and though his accounts therefor have been duly presented to the accounting officers of the Treasury for payment of said fees, and although payment of the same has been repeatedly demanded, yet no part of the same has been paid to him, nor to anyone for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused, although his accounts therefor were duly presented to and approved by said court in accordance with law.

Your petitioner further avers that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof; that his whole compensation, if said fees were added, would not exceed the maximum compensation of $3,500.00 for any one year.

Wherefore your petitioner prays judgment against the defendant for $993.00.

ALONZO J. VAN DUZEE.

By his attorney:

CHARLES C. LANCASTER,
Washington, D. C.

EXHIBIT A.

The United States of America, Dr., to Alonzo J. Van Duzee, clerk of the circuit court of the United States for the northern district of Iowa, for services rendered on behalf of the United States from July 1, 1897, to December 31, 1897, to wit:

Item 1. For filing and entering 9,930 separate and distinct records and other official papers deposited by commissioners of the circuit court of the

United States for the northern district of Iowa, as required by the 19th section of the act of May 28, 1896, 29 Stats., 184, at 10 cents each, disallowed, per report 36766, $993.00.

3 DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition, and petitioner is justly entitled to the amount therein claimed from the United States after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me this 9th day of November, 1898.

ROBERT H. YOUNG,
Notary Public.

II. TRAVERSE.

ALONZO J. VAN DUZEE }
vs. } December term, A. D. 1901, No. 21178.
THE UNITED STATES. }

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

4 III. FINDINGS OF FACT AND CONCLUSION OF LAW.—*Filed February 26, 1900.*

This case having been heard by the Court of Claims, the court, upon the evidence, make the following

FINDINGS OF FACT.

I.

The claimant, Alonzo J. Van Duzee, was clerk of the circuit court of the United States for the northern district of Iowa from August, 1882, to December 31, 1897, duly qualified and acting.

II.

During said period he made up his accounts for services rendered on behalf of the United States, and presented the same, duly verified, to the United States court for approval in the presence of the district attorney, and orders approving the same as being just and according to law were entered of record. Said accounts were then presented to the accounting

officers of the Treasury Department for payment. In the settlement of the account from July 1, 1897, to September 30, 1897, part was paid, but payment of services embraced in Finding III was refused.

III.

Item 1. For filing and entering 9,930 separate and distinct records and other official papers appertaining to the offices of commissioners of the circuit court of the United States for the northern district of Iowa, which were deposited by said commissioners under the act of May 28, 1896, in the office of the clerk of the circuit court for said district, at 10 cents each, as follows:

(*a*) Dockets and records, 16	$1.60
(*b*) Information or complaints, 2,997	299.70
(*c*) Warrants, 1,984	198.40
(*d*) Subpœnas, 1,899	189.90
(*e*) Documentary testimony, 446	44.60
(*f*) Bonds, 649	64.90
(*g*) Affidavits, 445	44.50
(*h*) Mittimus	44.60
(*i*) Search warrants, 22	2.20
(*j*) Applications for discharge of poor convicts, 587	58.70
(*k*) Oaths for discharge as poor convicts, 232	23.20
(*l*) Mandates to jailer for discharge as poor convicts, 169	16.90
(*m*) Applications for seaman's wages, 24	2.40
(*n*) Summons on applications for seaman's wages, 13	1.30
(*o*) Præcipe, 1	.10
	993.00

IV.

During the period when the aforesaid services were rendered, it was the settled practice under the verbal orders of the court for the clerk to file all papers sent up by the commissioners in said district; and by a written rule of court entered of record, it was made the duty of the clerk in cases wherein the commissioner held the defendant to appear at court to file the papers and transcripts sent up by the commissioner, and to forthwith enter the case on the docket, which rule is as follows:

"*Commissioner's papers.*

"Upon receipt by the clerk of the papers and transcript of proceedings before a commissioner, wherein the party is held to appear at court, the same shall be properly filed and the same entered upon the docket."

The aforesaid services were performed in compliance with said practice and rule of court.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decide as a conclusion of law that the claimant is entitled to judgment in the sum of nine hundred and ninety-three dollars ($993).

BY THE COURT.

5 IV. OPINION OF THE COURT.

NOTT, Ch. J., delivered the opinion of the court:

The act 28th May, 1896 (29 Stat. L., 184), provides:

"That the terms of office of all commissioners of the circuit courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed."

In this case the clerk filed the papers so deposited and seeks to recover the ordinary fees for filing papers, which fees amount in the aggregate to $993.

The defendants contend that the statute above quoted does not contemplate the filing of the papers as a part of the records of the office and that the clerk is entitled to no fee whatever.

Probably some of these papers were papers which the commissioners would have returned to the clerk's office for filing if they had continued in office, but it is impossible for the court to say how far this probability extends. The question, therefore, is simply this, whether depositing is equivalent within the intent of the statute to filing—whether all papers deposited should be filed.

The term "filing" is one well understood; the term "deposited" does not necessarily mean filing and of itself indicates nothing more than that the clerk's office should become, for the papers of the outgoing commissioners, a depository, a place of storage, where they would remain for safe-keeping and be found if any of them should ever be wanted.

But in the case of Marsh v. The United States (88 Fed. Rep., 879, 890, item 57) the district court for the northern district of Florida had this question under advisement, and held:

"The same act also requires that 'said commissioners shall then deposit all records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed.' Does this authorize the filing by the clerk of all papers sent in under this act? It seems clear that they become part of the records and files of the court. Some of the papers so sent in would, in any event, be sent up to be filed by the clerk, being papers in criminal cases, which there is no dispute as to the duty of the clerk to file; and in fact all but five dockets are papers of this nature, which should have been filed in any event. As to the others, as they become part of the files of the court, they should be properly indorsed and placed on the files. It is necessary for the clerk to maintain possession of the papers so sent up, to place them away in a safe place, and do all such acts as are included in the filing fee. There is no other compensation provided therefor, and the clerk should not be thus burdened without compensation, when there is an adequate and proper fee."

The defendants rested content. They had the right of appeal, but they did not see fit to exercise it. The judgment stands as a final adjudication of the rights of the parties.

It was said in the case of Meigs (20 C. Cls. R., p. 185), where the defendants, instead of appealing from a judgment against them, put the claimant to a second action:

"The defendants had their day in court, they have submitted their defenses to a court of competent jurisdiction, and the issue has been decided against them. That issue is forever settled between the parties in all future litigation. Such is the well-settled law between citizens, as decided by the Supreme Court in elaborately considered cases. (Beloit v. Morgan, 7 Wall., 619; Cromwell v. County of Sac, 94 U. S. R., 351; United States v. Nourse, 9 Pet., 8.) Interest reipublicæ ut sit finis litium.

"The judgment of this court might have been reviewed by the Supreme Court had the Attorney-General so elected. But he abandoned an appeal at the request, it is understood, of both the Secretary of the Interior and the Secretary of the Treasury, and his action is the action of the defendants." (United States v. Babbitt, 104 U. S. R., 767.)

6 In the present case the parties are different though the defendants are the same, and the decision in Marsh v. United States, of course, is not an estoppel that the present claimant can set up. But it is not to be supposed that the Government desires that a clerk in one circuit shall be paid for his services and another in another circuit shall be denied compensation for the same services; neither does it comport with the judicial integrity of the Federal authority that there be one law in one judicial district and an opposite law in another and that a gross diversity of statutory interpretation will make a suitor's legal rights dependent upon the jurisdiction in which he may chance to be. It is such uncertainties which bring reproach upon the administration of justice, and they are not to be tolerated when the means exist for bringing the diversities into one unquestionable rule. If in the case now before us the claimant had the right of appeal, this court would be at liberty to further examine the question involved and express freely its own conclusion. But in view of the fact that the defendants have, and they alone have, the means to correct the error, if error there be, the court is constrained to follow the decision above quoted and submit the determination of the question involved to that tribunal whose august province it is to reconcile all differences which may exist in the various branches of the Federal judiciary.

The judgment of the court is that the claimant recover judgment against the United States in the sum of $993.

V. Judgment of the Court.

Alonzo J. Van Duzee
vs.
United States. } No. 21178.

At a Court of Claims held in the city of Washington on the 26th day of February, 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said claimant, Alonzo J. Van Duzee, do have and recover of and from the United States the sum of nine hundred and ninety-three dollars ($993).

By the Court.

7 ALONZO J. VAN DUZEE
v.
THE UNITED STATES. } No. 21178.

VI. MOTION TO VACATE JUDGMENT AND FOR A NEW TRIAL.—*Filed March 10, 1900.*

Now comes the defendant, by its Attorney-General, and moves the court to vacate its judgment rendered in the above-entitled case on February 26, 1900, and to grant a new trial of the case, for the reason that the said judgment is based upon the understanding by the court that the case of Marsh *v.* United States (88 Fed. Rep., 879), in which the same question was involved as in this case and in which the decision was in favor of the claimant, has not been appealed by the defendant, and should therefore be treated as acquiesced in by the Government, which understanding of the situation is a misapprehension.

8 The Treasury Department upon the rendition of the judgment in the Marsh case promptly requested the Attorney-General to appeal the same and appeal was accordingly directed, pursuant to which direction a writ of error was issued from the circuit court of appeals in November, 1898. This appeal is, however, still pending for the reason that the circuit court of appeals was uncertain of its jurisdiction to entertain the same by reason of the provisions of the act of June 27, 1898 (30 Stats. L., 495), repealing the jurisdiction of circuit and district courts over suits of this character. But the appeal will undoubtedly soon be heard and determined, as by a recent enactment this jurisdiction has been restored as far as cases pending at the time of the passage of the act of June 27, 1898, are concerned. Accordingly it seems desirable that this case should be tried in this court upon its merits.

L. A. PRADT,
Assistant Attorney-General.

P. M. ASHFORD,
Assistant Attorney.

9 VII. ORDER OVERRULING MOTION OF DEFENDANTS FOR NEW TRIAL, ETC.

ALONZO J. VAN DUZEE
v.
UNITED STATES. } No. 21178.

At a Court of Claims held in the city of Washington, March 3, 1902, it was ordered—

That the defendants' motion to vacate the judgment and for a new trial be overruled.

BY THE COURT.

10 VIII. APPLICATION FOR AND ALLOWANCE OF APPEAL.

ALONZO J. VAN DUZEE
v.
UNITED STATES. } No. 21178.

From the judgment rendered in the above-entitled cause on the 26th day of February, 1900, in favor of the claimant, and the order overrul-

ing the defendants' motion to vacate said judgment and for a new trial, entered March 3, 1902, the defendants, by their Attorney-General, on the 17th day of March, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed March 17, 1902.

Ordered, That this appeal be allowed as prayed for.

BY THE COURT.

March 17, 1902.

11

Court of Claims.

ALONZO J. VAN DUZEE
vs.
THE UNITED STATES. } No. 21178.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court, of the judgment of the court, of the motion for a new trial and order overruling same, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 18th day of March, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

12 (Indorsement on cover:) File No., 18457. Court of Claims. Term No., 604. The United States, appellant, vs. Alonzo J. Van Duzee. Filed March 18, 1902.

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